

## **THE TANKER WAR II? – THE STRAIT OF HORMUZ**

### **Abstract**

Iran is facing increasing pressure from escalating EU and UN sanctions. There is a rapid military build-up in the waters near Iran – why?

### **Facts and Summary**

The Strait of Hormuz, a mere 20 miles across at its narrowest point, connects the Persian Gulf and the Gulf of Oman and 35% of all seaborne traded oil flows through the Strait daily. Iran has recently threatened to block the strait.

The central issue is whether a right to transit through international straits exists. Some argue that there is no clear legal basis for this. The most relevant instrument is the 1982 UN Convention on the Law of the Sea (“the Convention”). Many argue that the Convention does not create law but merely codifies the existing law called ‘customary international law’.

### **Two Rights by Convention: Innocent and Transit Passage**

- **Articles 17-24** of the Convention state that “ships of all States ... enjoy the right of innocent passage” and a “coastal State shall not hamper the innocent passage of foreign ships... [or provide] requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage”. However many States have objected to this provision and reserve the right to demand prior notification or authorization for the passage of warships. Innocent passage can be subject to conditions by the state and may even be suspended in case of emergency.
- **Articles 37-44** of the Convention state that “all ships and aircraft enjoy the right of transit passage, which shall not be impeded.”

The USA and many western States consider the Convention to be codified customary international law.

## **Customary (non-Treaty) International Law and Iran's Position**

Iran has signed but not ratified the Convention; therefore some argue that the Convention is of questionable force in the Strait of Hormuz. Those who argue in favour of a free right of transit invoke the International Court of Justice' judgment in *Corfu Channel*, which concerned the placing of mines in the waters off the Albanian coast.

Significantly, upon signature of the Convention, Iran explicitly expressed the view that the right of transit through straits is an exclusively treaty-based obligation, and that the Convention does not codify customary international law:

“It is... the understanding of the Islamic Republic of Iran that... the Convention being one of general application and of law making nature, certain of its provisions are merely product of *quid pro quo* which do not necessarily purport to codify the existing customs or established usage (practice) regarded as having an obligatory character. Therefore... only states parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein. The above considerations pertain specifically (but not exclusively) to the following: The right of Transit passage through straits...”

As Iran never ratified the Convention, the implication is that Iran does not consider itself bound by any such a treaty obligation. Indeed, the state of Oman also filed a declaration which questioned the status of transit passage, requiring entering warships to request prior permission.

## **Potential Developments in the Strait**

International disagreement over rights of passage are not new; Egypt's decision in 1967 to prevent the transit of ships flying Israeli flags or carrying strategic materials to Israel through the Straits of Tiran is considered to have contributed to the *casus belli* for the Six Day War. Some commentators suggest that the Iranian Navy's most likely course of action would lie in mining and missile operations. As can be seen from the picture, effective unilateral blocking of the strait at its narrowest point would also require Iran to impinge on Omani waters.

## **Conclusion**

What happens next is heavily dependent on political developments.

However, the legal basis for right of passage through the Strait of Hormuz is likely to acquire increasing focus in the days ahead.

# The Strait of Hormuz



Sources: IHS Janes, Petroleum Economist, Center for Strategic and International Studies, Flanders Marine Institute, National Geospatial-Intelligence Agency

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